

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI**

SCOTT and RHONDA BURNETT,)
RYAN HENDRICKSON,)
JEROD BREIT, SCOTT TRUPIANO,)
JEREMY KEEL, SHELLY DREYER,)
HOLLEE ELLIS, and FRANCES)
HARVEY on behalf of themselves and all)
others similarly situated,)
Plaintiffs,)
v.)
NATIONAL ASSOCIATION OF)
REALTORS, REALOGY HOLDINGS)
CORP., HOMESERVICES OF)
AMERICA, INC., BH AFFILIATES,)
LLC, HSF AFFILIATES, LLC, RE/MAX)
LLC, and KELLER WILLIAMS)
REALTY, INC.)
Defendants.)

Case No.: 4:19-cv-00332-SRB
CLASS ACTION

**SECOND SUPPLEMENTAL INITIAL DISCLOSURES OF DEFENDANT NATIONAL
ASSOCIATION OF REALTORS® PURSUANT TO FEDERAL RULES OF CIVIL
PROCEDURE 26(a)(1) and 26(e)**

Defendant National Association of Realtors® (“NAR”), pursuant to Federal Rules of Civil Procedure 26(a)(1) and 26(e), hereby makes the following initial disclosures.

These disclosures are based on the information reasonably available to NAR as of the date signed. NAR reserves the right to supplement or amend these disclosures under Federal Rule of Civil Procedure 26(e) as appropriate and as additional information becomes available.

1. INDIVIDUALS (Fed. R. Civ. P. 26(a)(1)(A)(i))

Listed below are individuals likely to have discoverable information that NAR may use

to support its claims or defenses, unless solely for impeachment. This list is provided based on information reasonably known to NAR as of the date of this disclosure. NAR reserves the right to supplement or amend this list as additional information becomes available.

The individuals are likely to have discoverable information regarding NAR rules, practices and/or policies are:

1. **Rodney Gansho, Director, Engagement, NAR:** Mr. Gansho may have knowledge related to the history, interpretation, and benefits of certain NAR Model Rules, Policies, Standards of Practice, Code of Ethics, and Arbitration provisions; NAR's corporate organization and relationship to other entities; Multiple Listing Services; NAR's leadership structure and responsibilities of leadership; NAR's antitrust policies and efforts to comply with antitrust laws; real estate brokerage services and practices; research and analysis of the real estate industry; NAR committees and advisory boards relating to multiple listing services.
2. **Rene Galicia, Former Director, MLS Engagement, NAR:** Mr. Galicia may have knowledge related to the history, interpretation, and benefits of certain NAR Model Rules, Policies, Standards of Practice, Code of Ethics, and Arbitration provisions; NAR's corporate organization and relationship to other entities; Multiple Listing Services; NAR's leadership structure and responsibilities of leadership; NAR's antitrust policies and efforts to comply with antitrust laws; real estate brokerage services and practices; research and analysis of the real estate industry; NAR committees and advisory boards relating to multiple listing services.
3. **Bob Goldberg, CEO, NAR:** Mr. Goldberg may have knowledge related to the history, interpretation, and benefits of certain NAR Model Rules, Policies, Standards of Practice, Code of Ethics, and Arbitration provisions; NAR's corporate organization and relationship to other entities; Multiple Listing Services; NAR's leadership structure and responsibilities of leadership; NAR's antitrust policies and efforts to comply with antitrust laws; real estate brokerage services and practices; research and analysis of the real estate industry; NAR committees and advisory boards relating to multiple listing services.
4. **Kate Lawton, Vice President, Member Experience, NAR:** Ms. Lawton may have knowledge related to the history, interpretation, and benefits of certain NAR Model Rules, Policies, Standards of Practice, Code of Ethics, and Arbitration provisions; NAR's corporate organization and relationship to other entities; Multiple Listing Services; NAR's leadership structure and responsibilities of leadership; NAR's antitrust policies and efforts to comply with antitrust laws; real estate brokerage services and practices; research and analysis of the real estate industry; NAR committees and advisory boards relating to multiple listing services.
5. **Sharon Millett, Former President and Director, NAR:** Ms. Millett may have knowledge related to the history, interpretation, and benefits of certain NAR Model Rules,

Policies, Standards of Practice, Code of Ethics, and Arbitration provisions; NAR's corporate organization and relationship to other entities; Multiple Listing Services; NAR's leadership structure and responsibilities of leadership; NAR's antitrust policies and efforts to comply with antitrust laws; real estate brokerage services and practices; research and analysis of the real estate industry; NAR committees and advisory boards relating to multiple listing services.

6. **Kevin Milligan, Former Vice President, Board Policy & Programs, NAR:** Mr. Milligan may have knowledge related to the history, interpretation, and benefits of certain NAR Model Rules, Policies, Standards of Practice, Code of Ethics, and Arbitration provisions; NAR's corporate organization and relationship to other entities; Multiple Listing Services; NAR's leadership structure and responsibilities of leadership; NAR's antitrust policies and efforts to comply with antitrust laws; real estate brokerage services and practices; research and analysis of the real estate industry; NAR committees and advisory boards relating to multiple listing services.
7. **Diane Mosley, Director, Training and Policy Resources, NAR:** Ms. Mosley may have knowledge related to the history, interpretation, and benefits of certain NAR Model Rules, Policies, Standards of Practice, Code of Ethics, and Arbitration provisions; NAR's corporate organization and relationship to other entities; Multiple Listing Services; NAR's leadership structure and responsibilities of leadership; NAR's antitrust policies and efforts to comply with antitrust laws; real estate brokerage services and practices; research and analysis of the real estate industry; NAR committees and advisory boards relating to multiple listing services.
8. **Clifford Niersbach, Former Associate General Counsel, NAR:** Mr. Niersbach may have knowledge related to the history, interpretation, and benefits of certain NAR Model Rules, Policies, Standards of Practice, Code of Ethics, and Arbitration provisions; NAR's corporate organization and relationship to other entities; Multiple Listing Services; NAR's leadership structure and responsibilities of leadership; NAR's antitrust policies and efforts to comply with antitrust laws; real estate brokerage services and practices; research and analysis of the real estate industry; NAR committees and advisory boards relating to multiple listing services.
9. **Andrew Scoulas, Coordinator, Association Leadership Development, NAR:** Mr. Scoulas may have knowledge related to the history, interpretation, and benefits of certain NAR Model Rules, Policies, Standards of Practice, Code of Ethics, and Arbitration provisions; NAR's corporate organization and relationship to other entities; Multiple Listing Services; NAR's leadership structure and responsibilities of leadership; NAR's antitrust policies and efforts to comply with antitrust laws; real estate brokerage services and practices; research and analysis of the real estate industry; NAR committees and advisory boards relating to multiple listing services.
10. **Katie Goldberg, Director, Member Experience, NAR:** Ms. Goldberg may have knowledge related to the history, interpretation, and benefits of certain NAR Model Rules, Policies, Standards of Practice, Code of Ethics, and Arbitration provisions; NAR's corporate organization and relationship to other entities; Multiple Listing Services; NAR's leadership structure and responsibilities of leadership; NAR's antitrust

policies and efforts to comply with antitrust laws; real estate brokerage services and practices; research and analysis of the real estate industry; NAR committees and advisory boards relating to multiple listing services.

11. **Jeremy Green, Coordinator, Member Experience, NAR:** Mr. Green may have knowledge related to the history, interpretation, and benefits of certain NAR Model Rules, Policies, Standards of Practice, Code of Ethics, and Arbitration provisions; NAR's corporate organization and relationship to other entities; Multiple Listing Services; NAR's leadership structure and responsibilities of leadership; NAR's antitrust policies and efforts to comply with antitrust laws; real estate brokerage services and practices; research and analysis of the real estate industry; NAR committees and advisory boards relating to multiple listing services.
12. **Chris Harrigan, Manager, Policy Information, NAR:** Mr. Harrigan may have knowledge related to the history, interpretation, and benefits of certain NAR Model Rules, Policies, Standards of Practice, Code of Ethics, and Arbitration provisions; NAR's corporate organization and relationship to other entities; Multiple Listing Services; NAR's leadership structure and responsibilities of leadership; NAR's antitrust policies and efforts to comply with antitrust laws; real estate brokerage services and practices; research and analysis of the real estate industry; NAR committees and advisory boards relating to multiple listing services.
13. **Dale Stinton, CEO Emeritus, NAR:** Mr. Stinton may have knowledge related to the history, interpretation, and benefits of certain NAR Model Rules, Policies, Standards of Practice, Code of Ethics, and Arbitration provisions; NAR's corporate organization and relationship to other entities; Multiple Listing Services; NAR's leadership structure and responsibilities of leadership; NAR's antitrust policies and efforts to comply with antitrust laws; real estate brokerage services and practices; research and analysis of the real estate industry; NAR committees and advisory boards relating to multiple listing services.
14. **Sarah Young, Former Director, Real Estate Services and Policy Oversight:** Ms. Young may have knowledge about NAR's leadership structure and responsibilities of leadership; NAR's advocacy and policy initiatives including the Real Estate Services Advisory Board.
15. **Representatives of the Heartland Multiple Listing Service:** These Representatives may have knowledge about the local real estate industry and how NAR rules operate in practice in a local MLS. Representatives may be contacted through MLS's counsel, Robert A. Henderson/or Philip J.R. Zeeck, 900 W. 48th Place, Suite 900, Kansas City, MO 64112; 816-753-1536.
16. **Representatives of the Mid America Regional Information System (“MARIS” MLS):** These Representatives may have knowledge about the local real estate industry and how NAR rules operate in practice in a local MLS. Representatives may be contacted through MLS's counsel, Robert A. Henderson/or Philip J.R. Zeeck, 900 W. 48th Place, Suite 900, Kansas City, MO 64112; 816-753-1536.

17. **Representatives of the Southern Missouri Regional MLS:** These Representatives may have knowledge about the local real estate industry and how NAR rules operate in practice in a local MLS. Representatives may be contacted through MLS's counsel, Robert A. Henderson/or Philip J.R. Zeeck, 900 W. 48th Place, Suite 900, Kansas City, MO 64112; 816-753-1536.
18. **Representatives of the Columbia Board of Realtors MLS:** These Representatives may have knowledge about the local real estate industry and how NAR rules operate in practice in a local MLS. Representatives may be contacted through MLS's counsel, Robert A. Henderson/or Philip J.R. Zeeck, 900 W. 48th Place, Suite 900, Kansas City, MO 64112; 816-753-1536.
19. **Representatives of real estate associations operating in the Subject MLSS:** These Representatives may have knowledge about the local real estate industry and how NAR rules operate in practice in a local MLS. Representatives may be contacted through MLS's counsel, Robert A. Henderson/or Philip J.R. Zeeck, 900 W. 48th Place, Suite 900, Kansas City, MO 64112; 816-753-1536.
20. **Named Plaintiffs:** The Named Plaintiffs in the above-captioned litigation should have knowledge of the allegations and claimed damages set forth in the Third Amended Class Action Complaint. Named Plaintiffs presumably can be contacted through Plaintiffs' counsel.
21. **All professionals, including real estate professionals, brokers, agents, attorneys, and all others, who assisted any Plaintiff with any real estate transaction:** These individuals may have knowledge about each Plaintiff's real estate transaction and any negotiations with the Plaintiff, and his or her broker or agent, and/or with the buyer of Plaintiff's real estate, and the buyer's broker or agent, and any communications and negotiations among all or some subset of those persons. Contact information for such individuals is unknown at this time.
22. **All professionals, including real estate professionals, brokers, agents, attorneys, and all others, who assisted the actual or prospective buyers of any Plaintiff's real estate transactions:** These individuals may have knowledge about each buyer's real estate transaction with Plaintiff and any negotiations with the Plaintiff, and his or her broker or agent, and/or with the buyer's broker or agent, and any communications and negotiations among all or some subset of those persons. Contact information for such individuals is unknown at this time.
23. **Representatives of Corporate Defendants:** These individuals may have knowledge of the absence of any agreement among Defendants regarding the rule Plaintiffs refer to as the "Adversary Commission Rule," as defined in the Third Amended Complaint ¶ 3, and other so-called "anticompetitive NAR Rules" referred to in the Third Amended Complaint ¶¶ 38, 106, 117, 138, 156.
24. **Any witness identified by any other party:** These individuals may have knowledge of the allegations and claimed damages set forth in the Third Amended Class Action Complaint and defenses thereto.

NAR employees should be contacted through NAR counsel. For the sake of completeness, NAR has kept Katie Goldberg, Jeremy Green, Chris Harrigan, and Andrew Scoulas in this disclosure, but NAR has already stipulated that it will not be calling these witnesses at trial. Further, NAR may rely upon one or more additional individuals that are identified by the parties during the course of discovery, as well as expert witnesses to be identified in accordance with any scheduling orders, to support NAR's claims and defenses. NAR will also rely on any additional witnesses necessary for impeachment or rebuttal.

2. DOCUMENTS (Fed. R. Civ. P. 26(a)(1)(A)(ii))

Listed below are descriptions by category of non-privileged documents, currently in NAR's possession, custody or control, that NAR may use to support its claims or defenses, unless solely for impeachment. This list is provided based on the information reasonably known to NAR as of the date of this disclosure. NAR reserves the right to supplement or amend this list as additional information becomes available.

- a. NAR Handbook on Multiple Listing Policy.
- b. NAR Code of Ethics and Standards of Practice.
- c. NAR Case Interpretations of the Code of Ethics and related documents reflecting NAR's interpretations of the rule at issue.
- d. NAR Answer Book.
- e. Documents produced by defendants in this litigation
- f. Documents produced by plaintiffs in this litigation
- g. Documents produced by third parties in response to subpoenas served in this litigation
- h. Documents considered or relied upon by any expert witness in this litigation.
- i. Documents used as deposition exhibits in this litigation or filed in conjunction with any briefing in this litigation.

j. Documents cited in any written discovery requests or responses in this litigation.

The documents listed above that are currently in NAR's possession, custody or control are located at the NAR headquarters in Chicago, Illinois and may be obtained through NAR counsel. NAR's investigation is ongoing, and it has not yet identified all documents that may reflect discoverable information that NAR may use to support its claims or defenses at trial. NAR will supplement these disclosures as necessary.

3. DAMAGES (Fed. R. Civ. P. 26(a)(1)(A)(iii))

NAR does not currently claim any damages in this action.

4. INSURANCE (Fed. R. Civ. P. 26(a)(1)(A)(iv))

NAR is covered under an insurance policy that may be applicable to any judgment that may be entered in this action or to indemnify or reimburse payments made to satisfy such a judgment. The insurer is Chubb, and the policy number is MPB G23658240 012.

Dated: August 24, 2023

Respectfully submitted,

/s/ Ethan Glass

Ethan Glass (*pro hac vice*)
COOLEY LLP
1299 Pennsylvania Avenue, NW
Suite 700
Washington, DC 20004-2400
Phone (202) 776-2244
eglass@cooley.com

***Attorneys for Defendant NATIONAL
ASSOCIATION OF REALTORS®***